

5 January 1998

Re: NEPA Technical Inquiry 0135 - Lease Extension in a Floodplain

Dear NEPA Call-In User:

This letter is in response to your August 13, 1997 request for information on GSA policy for lease extensions in a floodplain. NEPA Call-in received an e-mail message that stated a 20-year old lease for a GSA building housing the Social Security Administration (SSA) in Kentucky, will soon expire. The tenant of the building, the SSA, would like to stay in their current location and GSA would like to renew the lease in a simplified process. The message also stated a third party brought to the attention of GSA that the current building location may be within the 100-year floodplain and, if so, GSA may be required to consider practicable alternatives to the current site under Executive Order (EO) 11988, "Floodplain Management", May 24, 1977. You would like to know 1) if the property is actually in a floodplain, and 2) if in this case, GSA is required to implement the 8-step process outlined in the Federal Emergency Management Agency (FEMA) document, "Further Advise on Executive Order 11988 Floodplain Management."

SUMMARY OF FINDINGS

NEPA Call-In contacted the Army Corps of Engineers (ACE), FEMA, and the Kentucky Division of Water to find detailed floodplain information on the Kentucky, property. We located a 1986 Flood Insurance Rate Map (FIRM), but have not yet determined if the property is in a floodplain. In addition, we reviewed GSA floodplain and NEPA guidance to determine proper procedures for a lease extension. NEPA Call-In found the current guidance to be unclear on this issue, but the guidance under "Continuing Actions" in GSA Order ADM 1095.2, "Consideration of Floodplains and Wetlands in Decisionmaking," may apply.

DETAILED FINDINGS

NEPA Call-In contacted the ACE, Planning and Formulation Branch, Louisville Regional Office, (502) 582-5607, to determine if detailed floodplain information is available for the Kentucky, address. The representative we spoke with stated the only available information concerning the Kentucky, address is a FIRM published by FEMA in 1986. The representative also stated it was difficult to determine if the property is actually located in a 100-year flood zone based on the map. The ACE representative referred us to the FEMA regional office in Atlanta, Georgia.

NEPA Call-In then contacted Ms. Rose Austin, Floodplain Specialist, FEMA, Atlanta Region, (770) 220-5424. Ms. Rose confirmed there is no additional floodplain information for the Kentucky, property aside from the FIRM published in 1986. Ms. Rose referred us to the Kentucky Division of Water for additional information. She stated this is the local permitting authority and may have detailed hydraulic and floodplain information for the area of concern if permits for floodplain actions have recently been issued.

We attempted to contact Mr. David Martin of the Kentucky Division of Water, (502) 564-3410, but were only successful in leaving voice messages. We will continue our efforts to contact Mr. Martin and will forward any additional information from the Kentucky Division of Water to you in a follow up to this letter.

NEPA Call-In reviewed GSA floodplain guidance in GSA Order ADM 1095.2, to determine if a lease extension is considered an Action, which would then be subject to Executive Order (EO) 11988. Lease extensions are Automatic Categorical Exclusions (CATEX) for the purposes of NEPA, as noted in the GSA NEPA Desk Guide, Chapter 5, Section 5.3(e), "Automatic CateX." Subparagraph 4(a) of ADM 1095.2 states EO 11988 applies to the following GSA program actions: Real property acquisition through Federal construction, purchase, or lease. ADM 1095.2 does not specify if EO 11988 applies to lease extensions. The Order does, however, provide guidance in the case of a "Continuing Action." It states, "All continuing activities being conducted in wetlands and floodplains shall be periodically evaluated to determine their impacts upon the wetland or floodplain. The responsible official shall establish procedures for periodic physical inspections to identify adverse impacts upon the wetlands or floodplains, to evaluate those impacts and possible mitigation measures to minimize or eliminate the impacts, and to monitor the effectiveness of the implemented mitigation measures..." ADM 1095.2 does not, however, define the term "Continuing Action."

We attempted to locate the originating office for ADM 1095.2 for further guidance on the definitions for "Action" and "Continuing Action," since it is not clear whether the proposed lease extension fits one of these definitions for the purpose of EO 11988. We contacted information Management Division, GSA Central Office who stated the Order was issued under the Safety and Environmental Management department within GSA which has since been abolished. The GSA Division of Cultural and Environmental Affairs currently has the responsibility of providing guidance on and revising ADM 1095.2. NEPA Call-In notified the Director, GSA NEPA Program, Division of Cultural and Environmental Affairs, GSA National Office, of the lack of clarity on the definitions for "Action" and "Continuing Action" in ADM 1095.2 and requested that the ADM be revised to address this issue. The Director stated this Order will be considered for revision in the future in order that it may provide more solid guidance on floodplain issues. In the interim, however, if you determine that the proposed lease extension is in the base flood zone (100-yr floodplain), then the guidance in ADM 1095.2 under "Continuing Actions", as stated above, may apply.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher